

TABLE OF CONTENTS

| CHAPTER | TITLE | PAGE |
|----------|--|------|
| | DECLARATION | ii |
| | DEDICATION | iii |
| | ACKNOWLEDGEMENT | iv |
| | ABSTRACT | v |
| | ABSTRAK | vi |
| | TABLE OF CONTENT | vii |
| | LIST OF FIGURES | xii |
| | LIST OF CASES | xiii |
| | LIST OF ABBREVIATIONS | xvii |
| 1 | INTRODUCTION | 1-10 |
| 1.1 | Background Study | |
| 1.2 | Problem Statement | |
| 1.3 | Objective of Research | |
| 1.4 | Scope of Research | |
| 1.5 | Significance of Research | |
| 1.6 | Research Methodology | |
| 1.6.1 | Identifying the Research Issue by Literature Review | |
| 1.6.2 | Literature Review | |
| 1.6.3 | Data and Information Collection | |

- 1.6.3.1 Primary Data
 - 1.6.3.2 Secondary Data
 - 1.6.4 Data Analysis
 - 1.6.5 Report Writing
 - 1.6.6 Conclusion and Recommendations
- 1.7 Structure of Research
 - 1.7.1 Chapter 1: Introduction
 - 1.7.2 Chapter 2: Overview of Arbitration Proceedings
 - 1.7.3 Chapter 3: Reception of Evidence
 - 1.7.4 Chapter 4: Grounds That Amount to Infringement of Natural Justice in the Receiving of Evidence
 - 1.7.5 Chapter 5: Conclusion and Recommendations

2 OVERVIEW OF ARBITRATION PROCEEDINGS 11-48

- 2.1 Introduction
- 2.2 Arbitration Definition
- 2.3 Arbitration Agreement
- 2.4 Essential Elements of Arbitration
- 2.5 The Statutory Framework
 - 2.5.1 Arbitration Act 1952 (Revised in 1972)
 - 2.5.2 Arbitration Act 2005
- 2.6 Arbitration Proceedings
 - 2.6.1 Before The Hearing
 - 2.6.1.1 Appointment of Arbitrator
 - a) Power and Duties of Arbitrators
 - b) Arbitrator's Duty in Fact and Law

- 2.6.1.2 Preliminary Meeting
- 2.6.1.3 Interlocutory
 - a) Order For Directions
 - b) Pleadings
 - c) Discovery
- 2.6.2 The Hearing
- 2.6.3 The Award
- 2.6.4 Recourse Against Award
- 2.7 Conclusion

3 RECEPTION OF EVIDENCE

49-71

- 3.1 Introduction
- 3.2 Evidence Definition
- 3.3 Applicability of the Evidence Act 1950
- 3.4 Types and Forms of Evidence
 - 3.4.1 Direct Evidence
 - 3.4.2 Circumstantial Evidence/Indirect Evidence
 - 3.4.3 Testimonial/Oral Evidence
 - 3.4.4 Physical/Real Evidence
 - 3.4.5 Documentary Evidence
 - 3.4.6 Demonstrative Evidence
- 3.5 Evidence of Fact
- 3.6 Expert Evidence/Opinion Evidence
- 3.7 Hearsay Evidence
- 3.8 Proof of Evidence
- 3.9 Receiving and Excluding Evidence
- 3.10 Conclusion

4 GROUNDS THAT AMOUNT TO INFRINGEMENT OF NATURAL JUSTICE IN THE RECEIVING OF EVIDENCE 72-120

4.1 Introduction

4.2 Natural Justice Definition

4.2.1 Rule Against Bias (*nemo iudex in causa sua*)

4.2.2 Rule to 'Hear the other Side' (*audi alteram partem*)

4.3 The Purpose of Rules of Natural Justice

4.4 Court Case Analysis (Grounds that amount to infringement of Natural Justice in the Receiving of Evidence)

4.4.1 Arbitrator is Biased (*Breach of the rule of "nemo iudex in causa sua"*)

4.4.1.1 Arbitrator is in Conflict of Interest

4.4.1.2 Arbitrator is Reasonably be Suspected or Show a Real Likelihood of Bias

4.4.2 Arbitrator Conducts Unfair Hearing (*Breach of the rule of "audi alteram partem"*)

4.4.2.1 Receives Evidence of One Party in the Absence of the Other

4.4.2.2 Does Not Give a Fair Opportunity to a Party to Prove His Case

4.4.2.3 Disallows a Party to Cross-Examine his Opponent's Evidence

4.4.2.4 Arbitrator's Award was Based on
the Result of a Private Inquiry or
Based on His Own Expertise and
Experience without Notifying the
Parties

4.4.2.5 Failure to Appraise Evidence that
Affect the Award

4.5 Conclusion

5 CONCLUSION AND RECOMMENDATIONS 121-128

5.1 Introduction

5.2 Summary of Research Findings

5.3 Problem Encountered During Research

5.4 Future Research

5.5 Conclusion

5.6 Recommendations

REFERENCES 129-136

LIST OF FIGURES

| FIGURE | TITLE | PAGE |
|---------------|---|-------------|
| 1.1 | Research methodology and methods of approach | 8 |
| 2.1 | Arbitral process flow chart | 21 |
| 2.2 | Arbitration procedure and evidence | 22 |
| 5.1 | Circumstances that amount to infringement of the rules of natural justice in the receiving of evidence in arbitration | 122 |

LIST OF CASES

| CASE | PAGE |
|--|--------------------|
| <i>Abbott vs. Sullivan</i> (1952) 1 K.B.189 | 74 |
| <i>Abdul Hamid v Muhammad Afzal</i> (1927) ILR 8 Lah 329 | 78 |
| <i>Ac Ho Sdn Bhd v Ng Kee Seng (T/A Konsultant Senicipta)</i> [1998] 2 MLJ 393 | 73, 120, 127 |
| <i>Aiden Shipping Ltd v Intercontinental Ltd</i> (“ <i>the Almeida</i> ”) [1986] AC 965 | 105 |
| <i>Anwar Siraj and Another v Ting Kang Chung and Another</i> [2003] SGHC 64 | 94 |
| <i>Arenson v Casson, Beckman, Rutley and Co</i> [1975] 3 All E.R.901 | 40 |
| <i>ASM Shipping Ltd of India v TTMI Ltd of England</i> [2006] 1 Lloyd's Rep 375 | 93 |
| <i>Attorney General of Singapore v Wong Wai Cheng</i> [1980] 1 MLJ 131 | 106 |
| <i>Aubert v Maze</i> (1801) 2 Bos & Pul 371 | 19 |
| <i>Baker v Cotterill</i> (1849) 18 LJQB 345 | 60 |
| <i>Bank Mellat v GAA Development Construction Co</i> [1988] 2 Lloyd's Rep 44 | 84, 85 |
| <i>Balfour Beatty Construction Ltd v Lambeth London Borough Council</i> (2002) EWHC 597 | 101, 106, 108, 125 |
| <i>Baron v Sunderland Corporation</i> [1966] 1 All ER 349 | 15 |
| <i>Bauer (M) Sdn Bhd v Percon Corp Sdn Bhd</i> [2003] 6 MLJ 205 | 82 |
| <i>Beckwith v Sydebotham</i> (1807) 170 ER 897 | 58 |
| <i>Bhaiya v Jogeshwan</i> 52 All 938 | 78 |
| <i>Bignall v Gale</i> (1841) 2 Man & G 830 | 70 |
| <i>Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corp</i> [1981] AC 909 | 45 |
| <i>British Oil and Coke Mills Ltd v Horace Battin & Co Ltd</i> (1922) 13 LI L Rep 433 | 39, 105 |
| <i>Carlisle Place Investments v Wimpey Construction UK Ltd</i> [1980] 1 SLR 109 | 70 |
| <i>Ceval Alimentos SA v Agrimpex Trading Co Ltd</i> [1995] 2 Lloyd's Rep 380 | 96 |
| <i>Chandmull Moolchand & Co v Weis & Co Ltd</i> (1921) 9 LI L Rep 412 | 39 |
| <i>Chin Sen Wah v Public Prosecutor</i> [1958] MLJ 154 | 60 |
| <i>Chou Kooi Pang & Anor v Public Prosecutor</i> [1998] 3 SLR 593 | 60, 92 |
| <i>Chung and Wong v Cm Lee</i> [1934] 1 MLJ 153 | 97 |
| <i>Compania Argentina de Pesca v Eagle Oil Shipping Co</i> (1940) 65 LI LR 168 | 105 |
| <i>David Taylor & Son Ltd v Barnett Trading Co</i> (1953) 1 WLR 562 | 20 |
| <i>Deb Brata Das Gupta v Knight Frank & Anor</i> [2006] 2 MLJ 775 | 120 |
| <i>Deoki Nandan v Rajakumar</i> AWN 124 | 78 |

| | |
|--|-------------------|
| <i>Dimes v Proprietors of Grand Junction Canal</i> (1852) 3 HL Cas 759 | 86 |
| <i>Disdain Project Services Ltd. v Opecprime Development Ltd.</i> (2001) CILL 1698 | 102 |
| <i>Downer-Hill Joint Venture v Government of Fiji</i> [2005] 1 NZLR 554 | 80 |
| <i>Eads v Williams</i> (1854) 4 De G M & G 674 | 105 |
| <i>Erdman v Ingraham</i> (1967) 280 NYS 2d 865 | 104 |
| <i>European Grain and Shipping Ltd v Johnston</i> [1983] QB 520 | 45 |
| <i>Exormisis Shipping SA v Oonsoo, The Aristides Xilas</i> (No 1) [1975] 1 Lloyd's Rep 432 | 46 |
| <i>Fairclough Building Ltd v Vale of Belvoir Superstore Ltd</i> (1990) 56 BLR 74 | 2, 77, 127 |
| <i>Faubert & Watts v Temagami Mining Co Ltd</i> (1959) 17 DLR (2d) 246 | 20 |
| <i>Faure, Fairclough Ltd v Premier Oil and Cake Mills Ltd</i> [1968] 1 Lloyd's Rep 237 | 67 |
| <i>FE Hookway & Co Ltd v Alfred Isaacs & Sons</i> [1954] 1 Lloyds Rep 491 | 67 |
| <i>Fisher and Another v. P. G. Wellfair</i> (1981) 19 BLR 52 | 106, 107 |
| <i>Fletamentos Maritimos SA v Effjohn International BV</i> (No 3) [1997] 2 Lloyd's Rep 302 | 35 |
| <i>Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd</i> [2010] SGHC 80 | 111 |
| <i>Future Heritage Sdn Bhd v Intelek Timur Sdn Bhd</i> [2003] 1 MLJ 49 | 112, 125 |
| <i>Ganga Sahai v Lekhraj Singh</i> 9 All 253 | 78 |
| <i>Gateway Land Pte Ltd v Turner (East Asia) Pte Ltd</i> [1988] 1 MLJ 416 | 34 |
| <i>Gasing Heights Sdn Bhd v Pilecon Building Construction Sdn Bhd</i> [2000] 1 MLJ 621 | 101, 116 |
| <i>General Medical Council v Spackman</i> [1943] AC 627 | 111, 125 |
| <i>Ginder v Curtis</i> (1863) 14 CBNS 723 | 39 |
| <i>Glencot Development and Design Co Ltd v Ben Barrett & Son (Contractors) Ltd</i> (2001) 80 ConLR 14 | 84, 91, 105 |
| <i>Government of Ceylon v Chandris</i> [1963] 2 QB 327 | 95 |
| <i>Henry Bath and Son Ltd v Birgby Products</i> [1962] 1 Lloyds Rep 389 (QBD) | 96 |
| <i>Homer Burgess Ltd v Chirex (Annan) Ltd</i> [2000] BLR 124 | 105 |
| <i>Imperial Metal Industries (Kynoch) Ltd. v Amalgamated Union of Engineering Workers</i> [1979] 1 All ER 847 | 15 |
| <i>Indian Oil Corp Ltd v Coastal (Bermuda) Ltd</i> [1990] 2 Lloyd's Rep 407 | 36 |
| <i>Intelek Timur Sdn Bhd v Future Heritage Sdn Bhd</i> [2004] 1 MLJ 401 | 80, 81 |
| <i>nter ul td iden hippin o td (he imeira)</i> (1984) 2 Lloyd's Rep 66 | 99 |
| <i>Jeuro Development S.B. v Teo Teck Huat</i> [1998] 6 MLJ 545 | 2, 52, 71, 72 |
| <i>Jordenson & Co v Stora Kopparbergs Bergslags Aktiebolag</i> (1931) 41 LIL Rep 201 | 105 |
| <i>Junaidi bin Abdullah v Public Prosecutor</i> [1993] 3 MLJ 217 | 58 |
| <i>K/S A/S Bill Biakh v Hyundai Corporation</i> [1988] 1 Llyod's Rep 187 | 35 |
| <i>Kanda v Government of Malaya</i> [1962] AC 322 | 3, 76, 127, 128 |
| <i>Kemp v Rose</i> (1858) 1 Giff 258 | 79 |
| <i>Khoo Hi Chiang v Public Prosecutor</i> [1994] 1 MLJ 265 | 58 |
| <i>Koh Bros Building and Civil Engineering Contractor Pte Ltd v Scotts Development (SACARA) Pte Ltd</i> [2002] 4 SLR 748 | 101 |
| <i>Kuala Ibai Development Sdn Bhd v Kumpulan Perunding (1988) Sdn Bhd</i> (1999) 5 MLJ 137 | 92, 99 |
| <i>Lau Tiong Ik Construction Sdn Bhd v The Government of Malaysia</i> [2008] 5 MLJ 604 | 73, 118, 120, 127 |
| <i>Lewis Emanuel & Son, Ltd v Sammut</i> [1959] 2 Lloyd's Rep 629 | 70 |
| <i>Locabail (UK) Ltd v Bayfield Properties Ltd</i> [2000] QB 451 | 89, 123 |

| | |
|--|-------------|
| <i>Ma Hnine v Ma Nyein Bwin</i> 1936 AIR Rang 191 | 78 |
| <i>MacLean v The Workers' Union</i> [1929] 1 Ch 602 | 104 |
| <i>Macob Civil Engineering Ltd v Morrison Construction Ltd</i> [1999] BLR 93 | 104 |
| <i>Macpherson Train & Co Ltd v J Milhem & Sons</i> [1955] 1 Lloyd's Rep 597 | 67 |
| <i>Mediterranean and Eastern Export Co v Fortress Fabrics (Manchester) Ltd</i> [1948] 2 All ER 186 | 105 |
| <i>Methanex Motunui Ltd v Spellman</i> [2004] 3 NZLR 454 | 77 |
| <i>Metropolitan Properties v. Lannon</i> [1969] 1 Q.B. 577 | 87, 88, 123 |
| <i>Miller v Minister of Housing and Local Government</i> [1968] 1 WLR 992 | 104 |
| <i>Mohan Lal Mirpuni v Amarjit Singh Jass</i> [1997] 56 ConLR 31 | 95, 102 |
| <i>Montrose Canned Foods Ltd v Eric Wells (Merchants) Ltd</i> [1965] 1 Lloyd's Rep 597 | 96 |
| <i>Nares v Drury</i> (1864) 10 LT 305 | 39 |
| <i>Naumann v Nathan</i> (1930) 37 LILR 249 | 25, 60 |
| <i>Nauru Phosphate Royalties trust v Matthew Hall Ltd</i> [1993] ADRLJ 223 | 66 |
| <i>New India Assurance Co Ltd v Lewis</i> [1967] 1 MLJ 156 | 15, 18 |
| <i>Norbook Laboratories Ltd v (1) A Tank (2) Moulson Champlant Lt</i> (TCC) 12 May 2006 | 109 |
| <i>Ocean Laser Shipping Ltd v Charles M Willie & Co (Shipping) Ltd, The Smaro</i> [1999] 1 Lloyd's Rep 225 | 35 |
| <i>Ong Chan Tow v R</i> (1963) MLJ 160 | 60, 92 |
| <i>Page v Llandaff and Dinas Powis Urban District Council</i> (1901) Hudson's BC 4th ed. Vol.2 316 | 98, 124 |
| <i>Phipps v Ingram</i> (1835) 3 Dowl 669 | 67 |
| <i>Podar Trading Co v Tagher</i> [1949] 2 KB 277 | 19 |
| <i>Public Prosecutor v Muhamed bin Sulaiman</i> [1982] 2 MLJ 820 | 58 |
| <i>R v Abbey</i> [1982] 2 SCR 24 | 61 |
| <i>R v Camborne Justices</i> [1955] 1 QB 41 | 83 |
| <i>R v Deputy Industrial Injuries Commissioner, ex p Moore</i> [1965] 1 QB 456 | 104 |
| <i>R v Gough</i> [1993] 2 All ER 724 | 83, 88 |
| <i>R v Rand</i> (1866) LR 1 QB 230 | 83 |
| <i>R v Turner</i> [1975] 1 All ER 70 | 60, 92 |
| <i>R v War Pensions Entitlement Appeal Tribunal ex p Bott</i> (1934) 50 CLR 228 | 78 |
| <i>Ramsay v Watson</i> (1961) 108 CLR 642 | 58 |
| <i>Ravenseft Properties Ltd v Boots Properties Ltd</i> [1988] ADRLN 7 | 105 |
| <i>Re Carus-Wilson and Greene</i> (1886) 18 QBD 7 (UK) | 40 |
| <i>Renovn Investment v Mecca Leisure</i> [1984] 271 EG 989 | 76 |
| <i>Ritchie v W Jacks & Co</i> (1922) 10 LI L Rep 519 | 67 |
| <i>RSL (South West) Ltd v Stansell Ltd</i> (2003) CILL 2012 | 100 |
| <i>Rushworth v Waddington</i> (1859) 1 LT 69 | 39 |
| <i>Scrimaglio v Thornett and Fehr</i> [1924] 18 LIL Rep 148 | 34 |
| <i>Sellar v Highland Railway Co</i> [1919] SC (HL) 19 | 86, 87 |
| <i>Sembawang Engineering Plc Ltd v Priser Asia Engineering Pte Ltd</i> [1992] 2 SLR 806 | 34 |
| <i>Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority</i> [1971] 2 MLJ 210 | 82, 112 |
| <i>Sharp v Nowell</i> (1848) 6 CB 253 | 60 |
| <i>Simmons v. Secretary of State for the Environment</i> [1985] J.P.L. 253 | 87, 123 |
| <i>Tan Kim Hor v Tan Chong & Motor Co Sdn Bhd & Ors</i> [2003] 2 MLJ 278 | 89 |
| <i>Tan Kooi Neoh v Chuah Tye Imm</i> [1958] 1 MLJ 123 | 103 |

| | |
|--|---------------------------|
| <i>Tan Tong Meng Co (Pte) Ltd v Artic Builders & Co (Pte) Ltd</i> [1986] 2 MLJ 241 | 73, 127 |
| <i>Techno-Implex v Gebr van Weelde Scheepvaartkantoor BV</i> (1981) 2 All ER 669 | 20 |
| <i>The Government of India v Cairn Energy India Pty Ltd & Ors</i> [2003] 1MLJ 348 | 111 |
| <i>The Government of Sarawak v Sami Mousawi-Utama Sdn Bhd</i> [2000] 6 MLJ 433 | 111, 115 |
| <i>Thomas Borthwick v Faure and Fairclough</i> [1968] 1 Lloyd's Rep 16 | 106 |
| <i>Town and City Properties (Development) v Wilthsier Southern & Gilbert</i> (1980) 44 BLR 109 | 39, 79, 96, 106, 123, 124 |
| <i>Tracom SA v Gibbs Nathaniel (Canada) Ltd</i> [1985] 1 Lloyd's Rep 596. | 85 |
| <i>Trustees of Rotoaira Forest Trust v Attorney General</i> [1999] 2 NZLR 452 | 119, 127 |
| <i>Try Construction Ltd v Eton Town House Group Ltd</i> [2003] EWHC 60 | 92 |
| <i>Turnbul v Rular Municipality of Pipestone</i> [1915] 24 DLR 281 | 85 |
| <i>Turner (East Asia) Pte Ltd v Builders Federal (Hong Kong) (No 2)</i> [1988] 2 MLJ 502 | 73, 127 |
| <i>Veritas Shipping Corp v Anglo-Canadian Cement Ltd</i> [1996] 1 Lloyd's Rep 76 | 86 |
| <i>WN Lindsay & Co Ltd v European Grain & Shipping Agency Ltd</i> [1963] 1 Lloyd's Rep 437 | 67 |
| <i>Whitmore v Smith</i> (1861) 7 H & N 509 | 60 |
| <i>William v Thomas</i> (1987) 8 LTOS 348 | 39 |
| <i>Wilson v Sons & Co (1887) 51 JP 230</i> | 20 |
| <i>Wiseman v Borneman</i> [1971] AC 297 HL | 74 |
| <i>Wright v Hawson</i> (1888) 4 TLR 386 | 105 |
| <i>Zublin Muhibah JV v Government of Malaysia</i> [1990] 3 MLJ 125 | 31 |

LIST OF ABBREVIATIONS

| | | |
|------------|---|--|
| AC | - | Appeal Cases |
| ADR | - | Alternative Dispute Resolution |
| ADRLJ | - | Arbitration and Dispute Resolution Law Journal |
| ADRLN | - | Arbitration and Dispute Resolution Law Newsletter |
| All | - | Australian Law Librarian |
| All ER | - | All England Law Reports |
| BLR | - | British Law Reports |
| Bos & Pul | - | Bosanquet's & Puller's Common Pleas Reports |
| CB | - | Common Bench Reports |
| CBNS | - | Common Bench Reports by Manning Granger & Scott, New Series |
| Ch | - | Cases in Chancery |
| CIDB | - | Construction Industry Development Board |
| CILL | - | Construction Industry Law Letter |
| CLR | - | Commonwealth Law Reports |
| ConLR | - | Construction Law Reports |
| De G M & G | - | De Gex, Macnaghten & Gordon's Reports |
| DLR | - | Dominion Law Reports |
| DLR (2d) | - | Dominion Law Reports (2nd Series) (Canada) |
| Dowl | - | Dowling and Lowndes Bail Court Reports |
| EG | - | Estates Gazette (UK) |
| ER | - | English Reports |
| EWHC | - | High Court of England and Wales Decisions |
| Giff | - | Giffard's Chancery Reports |
| H&N | - | Hurlstone & Norman's Exchequer Reports |
| HL Cas | - | Clarke's House of Lords Cases |

| | | |
|-------------|---|--|
| I.L.R | - | International Law Reports |
| IBID | - | Ibiden (in the same) |
| ICC | - | International Chamber of Commerce |
| IEM | - | Institution of Engineers Malaysia |
| J | - | Judge |
| JCT | - | Joint Contracts Tribunal |
| JP | - | Justice of the Peace Reports |
| JPL | - | Journal of Law Planning |
| KB | - | King's (or Queen's) Bench |
| KLRC | - | Kuala Lumpur Regional Centre for Arbitration |
| LiL Rep | - | Lloyd's List Law Reports |
| Lloyd's Rep | - | Lloyd's Law Reports |
| LJQB | - | Law Journal Reports, Queen's Bench |
| LT | - | Law Times Reports |
| LTOS | - | Law Times Reports, Old Series 1843-1859 |
| Man & G | - | Manning & Granger's Common Pleas Reports |
| MLJ | - | Malayan Law Journal |
| NYS 2d | - | New York Supplement (2nd Series 1938) |
| NZLR | - | New Zealand Law Reports |
| PAM | - | Pertubuhan Arkitek Malaysia /Malaysian Institute of Architects |
| PWD/JKR | - | Public Works Department/Jabatan Kerja Raya |
| QB | - | Queen's Bench Reports |
| QBD | - | Queen's Bench Division |
| SC (HL) | - | Session Cases (House of Lords) (Scotland) |
| SCR | - | Supreme Court Reports |
| SGHC | - | Singapore High Court (unreported judgments) |
| SLR | - | Singapore Law Reports |
| TCC | - | Technology Construction Courts |
| TLR | - | Times Law Reports |
| UNCITRAL | - | United Nations Commission on International Trade Law |
| UTM | - | Universiti Teknologi Malaysia |
| WLR | - | Weekly Law Reports |